

APPEAL NO. 040728
FILED MAY 11, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 23, 2004. The hearing officer determined that the decedent was not in the course and scope of his employment at the time of the motor vehicle accident (MVA) on _____. The appellants (beneficiaries) appeal this determination. The respondent (carrier) contends that the beneficiaries' appeal was not timely filed and, therefore, should not be given consideration. Alternatively, the carrier urges affirmance of the hearing officer's decision. The beneficiaries respond to the carrier's appeal, asserting that their appeal was timely filed.

DECISION

Affirmed.

Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed or mailed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Commission records indicate that the hearing officer's decision and order was mailed to the beneficiaries on March 4, 2004, and was deemed received on March 9, 2004. See Rule 102.5(d). Under Section 410.202(a), 15 days from the deemed date of receipt of the decision would have been March 30, 2004. The beneficiaries' appeal is postmarked March 30, 2004, and was received by the Commission on April 2, 2004. Therefore, the appeal was timely filed.

A compensable injury is one that arises out of and in the course and scope of employment for which compensation is payable under this subtitle. Section 401.011(10). Course and scope of employment is defined as "an activity of any kind or character that has to do with and originates in the work, business, trade or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer." Section 401.011(12). The issue of course and scope of employment was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance

Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer was not persuaded by the evidence presented that the decedent was acting in the course and scope of his employment at the time of the MVA. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The beneficiaries assert on appeal that the hearing officer's decision was issued too quickly after the hearing, thereby making it impossible for him to have reviewed all of the evidence. We find no basis for the assertions that the hearing officer failed to consider all of the evidence. Additionally, the beneficiaries contend that the Statement of the Evidence "is less than a page long, making it difficult to perceive the hearing officer's rationale for his decision." A hearing officer is not required to recite the facts since the 1989 Act only requires Findings of Fact, Conclusions of Law, whether benefits are due, and an award of benefits due. Texas Workers' Compensation Commission Appeal No. 93791, decided October 18, 1993. A statement of evidence, if made, only needs to reasonably reflect the record. The hearing officer's Statement of the Evidence accurately and succinctly reflects the facts that support the hearing officer's decision.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **NORTHERN INSURANCE COMPANY OF NEW YORK** and the name and address of its registered agent for service of process is

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251-2237.**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge